

Oil Spill Legislation in the 111th Congress

Updated November 3, 2010

Congressional Research Service

<https://crsreports.congress.gov>

R41453

Summary

This report summarizes provisions of selected legislation—enacted and proposed—that addresses oil spill policy issues raised after the April 20, 2010, explosion and resulting oil spill at the *Deepwater Horizon* drilling platform in the Gulf of Mexico.

The 2010 Gulf oil spill has generated considerable interest in oil spill issues. The House of Representatives has conducted at least 33 hearings in 10 committees. The Senate has conducted at least 30 hearings in eight committees. Members have introduced over 150 legislative proposals that have included one or more provisions that would affect oil spill policy.

As of the date of this report, President Obama has signed three bills into law that include oil spill provisions. Provisions in these bills are generally short-term matters that will not have a lasting impact on oil spill governance. However, H.R. 3619, the Coast Guard Authorization Act for Fiscal Years 2010 and 2011, which the President signed October 15, 2010 (P.L. 111-281), includes more substantial changes.

In addition to the enacted legislation, the House has passed several bills, including H.R. 3534, the Consolidated Land, Energy, and Aquatic Resources Act (CLEAR Act), that include multiple oil spill policy provisions. The Senate has comparable bills on its Legislative Calendar, but has not voted on their passage.

This report focuses primarily on oil spill policy matters that concern prevention, preparedness, response, and the liability and compensation framework. For the most part, the underlying statutes for these provisions are found in either the Oil Pollution Act of 1990 (P.L. 101-380; 33 U.S.C. 2701 et seq.) or the Clean Water Act and its amendments (33 U.S.C. 1251 et seq.). In general, this report does not address legislation that would alter the organizational structure of the former Minerals Management Service (MMS) or legislation that would affect the offshore leasing process.

Contents

Introduction	1
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Tables

Table 1. Enacted Oil Spill Legislation.....	2
Table 2. Passed or Reported Legislation in the House	4
Table 3. Passed or Reported Legislation in the Senate.....	9
Table 4. Summary of Selected Oil Spill Policy Provisions of H.R. 3534	12
Table 5. Summary of Selected Oil Spill Policy Provisions of S. 3663.....	18

Contacts

Author Information.....	26
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Introduction

On April 20, 2010, an explosion occurred at the *Deepwater Horizon* drilling platform in the Gulf of Mexico, resulting in 11 fatalities. The incident disabled the facility and led to a full evacuation before the platform sank into the Gulf on April 22. A significant release of oil at the sea floor was soon discovered. According to the National Incident Command's Flow Rate Technical Group estimate of August 2, 2010, the well released approximately 206 million gallons of oil (4.9 million barrels) before it was contained July 15, 2010.¹

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This report focuses primarily on oil spill policy matters that concern prevention, preparedness, response, and the liability and compensation framework. For the most part, the underlying statutes for these provisions are found in either the Oil Pollution Act of 1990 (P.L. 101-380; 33 U.S.C. 2701 et seq.) or the Clean Water Act and its amendments (33 U.S.C. 1251 et seq.). In general, this report does not address legislation that would alter the organizational structure of the former Minerals Management Service (MMS) or legislation that would affect the offshore leasing process.²

This report highlights oil spill provisions in enacted legislation, legislation that has passed one of the chambers, and legislation that has received committee action: reported or ordered to be reported from a committee. This last group also includes bills that have been placed on the Senate's Legislative Calendar.³ In addition, this report provides a more comprehensive summary of two selected bills in Congress, both of which contain a substantial number of oil spill policy provisions. This information is captured in the following tables:

- **Table 1** identifies enacted legislation.
- **Table 2** identifies legislation that has either passed the House or been reported from a House committee.
- **Table 3** identifies legislation that has passed the Senate, been reported from a committee, or placed on the Legislative Calendar.
- **Table 4** highlights selected oil spill policy provisions in H.R. 3534—the Consolidated Land, Energy, and Aquatic Resources Act of 2010 (CLEAR Act).
- **Table 5** highlights selected oil spill policy provisions in S. 3663—the Clean Energy Jobs and Oil Company Accountability Act of 2010.

The bills identified in the tables are listed in (descending) order by bill number.

¹ Approximately 35 million gallons was recovered directly from the wellhead. National Incident Command, "BP Deepwater Horizon Oil Budget: What Happened to the Oil?," August 2, 2010.

² For more information on some of these issues, see CRS Report R41262, *Deepwater Horizon Oil Spill: Selected Issues for Congress*, coordinated by Curry L. Hagerty and Jonathan L. Ramseur.

³ For more information on this procedure, see CRS Report RL30945, *House and Senate Rules of Procedure: A Comparison*, by Judy Schneider.

Table 1. Enacted Oil Spill Legislation

Does not include resolutions

Bill Number	Sponsor	Introduced Date	Short Title	Major Actions	Key Provisions
H.R. 5499 S. 3473	Mica Reid	June 10, 2010 June 9, 2010		Passed House June 10, 2010; passed Senate June 9, 2010; signed by President Obama June 15, 2010 (P.L. 111-191).	Authorizes additional advances from the Oil Spill Liability Trust Fund, up to \$100 million per advance, not to exceed the per-incident cap. Advances only available in response to <i>Deepwater Horizon</i> incident.
H.R. 4899	Obey	March 21, 2010	Supplemental Appropriations Act, 2010	Passed House March 24, 2010; passed Senate May 27, 2010; signed by President Obama July 29, 2010 (P.L. 111-212).	Provides \$94 million for oil spill-related programs. ^a
H.R. 3619	Oberstar	September 22, 2009	Coast Guard Authorization Act for Fiscal Years 2010 and 2011	Passed House October 23, 2009; Senate passed an amended version May 7, 2010; passed House September 30, 2010; signed by President Obama October 15, 2010 (P.L. 111-281).	Instructs NOAA Administrator to establish an oil spill prevention/education program for small vessels; authorizes annual appropriation of \$10 million for FY2010-FY2014 to support program. Amends OPA in following ways: modifies the definition of responsible party to include the owner of the oil transported in a single-hull vessel; authorizes appropriations to NOAA—\$15 million per fiscal year for response and damage assessment activities; modifies provisions concerning Trust Fund auditing procedures; requires certain double-hull tanks in Prince William Sound to be escorted by two towing vessels; specifies that any tank vessel over 100 gross tons must demonstrate financial responsibility. Requires Secretary of Homeland Security to submit a report regarding human error and oil spills (or near misses); prepare a tribal consultation policy to improve

Bill Number	Sponsor	Introduced Date	Short Title	Major Actions	Key Provisions
					<p>coordination of oil spill prevention, preparedness, response, and natural resource damage assessment; submit a report to Congress on technology that can detect oil spilled from a tank or non-tank vessel; ensure stronger enforcement of International Maritime Organization agreements.</p> <p>Alters shipping code (46 U.S.C. § 3306) to require certain vessels be in compliance with construction standards for oil fuel tanks (Regulation 12A of Annex I Protocol of 1978 relating to the International Convention for the Prevention of Pollution from Ships); directs Secretary of Homeland Security to promulgate implementing regulations.</p> <p>Directs Coast Guard to promulgate regulations concerning oil transfer operations and provide status update on rulemakings.</p> <p>Encourages the Secretary of Homeland Security to work with other Arctic nations (through the International Maritime Organization) to ensure oil spill prevention and response capability in the Arctic.</p>

Source: Prepared by CRS.

- a. See CRS Report R41232, *FY2010 Supplemental for Wars, Disaster Assistance, Haiti Relief, and Other Programs*, coordinated by Amy Belasco.

Table 2. Passed or Reported Legislation in the House

Does not include resolutions

Bill Number	Sponsor	Introduced Date	Short Title	Major Actions	Key Provisions
H.R. 6016	Brady	July 30, 2010	Audit the BP Fund Act of 2010	Passed House September 28, 2010.	Directs the Comptroller General (GAO) to conduct an investigation and audit (with subpoena power) of the Gulf Coast Claims Facility, reporting to Congress on a monthly basis.
H.R. 6008	Schauer	July 30, 2010	Corporate Liability and Emergency Accident Notification Act (CLEAN Act)	Passed House September 28, 2010.	Amends pipeline transportation code (49 U.S.C. Chapter 601) to require “immediate telephonic notification” (defined as “earliest practicable moment,” but not later than one hour) for certain pipeline incidents. Directs Secretary of Transportation to maintain an internet database of reportable incidents involving gas or hazardous liquid pipelines.
H.R. 5629	Oberstar	June 29, 2010	Oil Spill Accountability and Environmental Protection Act of 2010	Reported by the House Committee on Transportation and Infrastructure (H.Rept. 111-567) July 27, 2010.	Eliminates liability limit for offshore facilities (applies retroactively); increases financial responsibility demonstration for offshore facilities to \$1.5 billion (or a greater amount determined by the President); adds damages to human health to the liability provisions under OPA; modifies liability provisions for mobile offshore drilling units (MODUs); adds Indian Tribes to government revenue liability category; repeals provisions in Limitation of Liability Act (46 U.S.C. Chapter 305); expands liability under Death on the High Seas Act (46 U.S.C. Chapter 303) and Jones Act (46 U.S.C. § 30104). Shortens the timeframe from 90 to 45 days for claimants waiting on responsible

Bill Number	Sponsor	Introduced Date	Short Title	Major Actions	Key Provisions
					<p>party to address a submitted claim; authorizes President to require (during a spill of national significance, SONS) a responsible party to provide information related to its claims process.</p> <p>Eliminates the “rebuttable presumption” provision that applies to trustees’ natural resource damage assessments in administrative or judicial proceedings.</p> <p>Adds provision to shipping code (46 U.S.C. § 12111) requiring that vessels (including MODUs) engaged in exclusive economic zone (EEZ) resource activities be registered and owned by a U.S. citizen (i.e., U.S. flagged); requires MODU safety management plans (pursuant plans in 46 U.S.C. § 3203) to address drilling operations; directs the Secretary of Homeland Security to enhance MODU safety standard regulations by addressing worst-case discharges; enhances the Coast Guard’s marine safety workforce; instructs Secretary of Homeland Security to report to Congress on needs of maritime safety and security teams participating in patrols and setup of safety zones; requires a MODU operator to obtain a specific license.</p> <p>Shortens the double-hull transition period (from 2015 to 2011) for single-hull tankers offloading oil at deepwater ports or in lightering zones; removes ability for tank vessels and offshore/onshore facilities to operate without a response plan if a submitted plan is awaiting official approval.</p> <p>Amends the CWA to require changes to the NCP regarding dispersants (in</p>

Bill Number	Sponsor	Introduced Date	Short Title	Major Actions	Key Provisions
					<p>particular, toxicity thresholds), containment booms, response planning for worst-case discharges; directs President to promulgate implementing regulations; instructs President to establish a comprehensive oil/hazardous substance discharge database.</p> <p>Directs the Secretary of Transportation to submit report to Congress on existing regulations covering transportation-related offshore platforms.</p> <p>Modifies oversight authority of spill response plans; requires that response plans contain additional information (e.g., risk analysis); grants additional authority concerning response plan oversight and enforcement; increases certain CWA penalty amounts; modifies the administrative penalty provisions.</p> <p>Directs the Secretary of Homeland Security to establish a process for technology use during an oil spill (or hazardous substance release); amends OPA to specify sensing and monitoring system equipment requirements for offshore facilities.</p> <p>Amends CWA to more explicitly describe the oil spill prevention and response duties of EPA, the Coast Guard, and DOT; requires the Coast Guard to inventory and maintain a database of all vessels capable of oil spill response.</p> <p>Amends pipeline provisions (49 U.S.C. § 60108) to require damage notification and assessment;</p>

Bill Number	Sponsor	Introduced Date	Short Title	Major Actions	Key Provisions
H.R. 5626	Waxman	June 29, 2010	Blowout Prevention Act of 2010	Reported by the House Committee on Energy and Commerce (H.Rept. 111-581).	<p>Directs the National Commission on the BP <i>Deepwater Horizon</i> Oil Spill and Offshore Drilling to make recommendations pertaining to offshore drilling governance; instructs the Comptroller General to examine former Coast Guard officials' involvement in foreign flag maritime programs after leaving the Coast Guard; tasks the Directors of the Agency for Toxic Substances and Disease Registry and the Centers for Disease Control with report to Congress on health impacts related to the Gulf oil spill.</p> <p>Requires high-risk (as defined) offshore oil well permit applicants to demonstrate and attest specific prevention and response technologies are in place to receive a permit; sets relief well drilling timeframes; requires certain technologies on blowout preventers and periodic third-party inspections; requires specific well design components and third-party inspections; specifies work stoppage situations; creates a Well Control Technical Advisory Committee, which will submit reports to Congress regarding relevant technologies, regulations, and implementation; authorizes periodic, unannounced inspections; allows for citizen suits compelling compliance with these provisions; establishes penalties for non-compliance; facilitates the Chemical Safety and Hazard Investigation Board's involvement in future investigations.</p>

Bill Number	Sponsor	Introduced Date	Short Title	Major Actions	Key Provisions
H.R. 5481	Capps	June 8, 2010		Passed House June 23, 2010.	Provides subpoena power to the National Commission on the BP <i>Deepwater Horizon</i> Oil Spill and Offshore Drilling.
H.R. 4213	Rangel	December 7, 2009	Unemployment Compensation Extension Act of 2010 (formerly the American Jobs and Closing Tax Loopholes Act of 2010)	First version passed House December 9, 2009; amended by Senate and passed March 10, 2010; House amended and passed May 28, 2010; after further activity Senate passed amended version July 21, 2010; House passed same version July 22, 2010; signed by President Obama July 22, 2010 (P.L. 111-205).	The version that passed the House May 28, 2010, would have increased the per-barrel tax to 34 cents and extended the tax rate to December 31, 2020. <i>The enacted legislation does not include oil spill-related provisions.</i>
H.R. 3534	Rahall	September 8, 2009	Consolidated Land, Energy, and Aquatic Resources Act of 2009 (CLEAR Act)	Passed House July 30, 2010.	See Table 4 .
H.R. 2693	Woolsey	June 6, 2009	Federal Oil Spill Research Program Act	Reported by the House Committee on Science and Technology (H.Rept. 111-553); passed House July 21, 2010.	Amends the OPA Title VII: establishes interagency committee, chaired by NOAA, which would assess research, develop research plan, set up competitive grant program, prepare reports; direct NAS assessment; repeal funding authorization cap of \$27.5 million.

Source: Prepared by CRS.

Table 3. Passed or Reported Legislation in the Senate

Does not include resolutions, but includes legislation placed directly on Senate Legislative Calendar

Bill Number	Sponsor	Introduced Date	Short Title	Major Actions	Key Oil Spill Policy Provisions
S. 3815	Reid	September 21, 2010	Promoting Natural Gas and Electric Vehicles Act of 2010	Placed on the Senate Legislative Calendar September 21, 2010.	Increases the Oil Spill Liability Trust Fund per-barrel financing rate from 8 to 21 cents.
S. 3793	Baucus	September 16, 2010	Job Creation and Tax Cuts Act of 2010	Placed on the Senate Legislative Calendar September 20, 2010.	Increases the Oil Spill Liability Trust Fund per-barrel financing rate from 8 to 78 cents. Extends the financing rate sunset date from the end of 2017 until the end of 2020. Raises the Trust Fund's per-incident limitation from \$1 billion to \$5 billion (natural resource damages from \$500,000 to \$2.5 billion).
S. 3663	Reid	July 28, 2010	Clean Energy Jobs and Oil Company Accountability Act of 2010	Placed on Senate Legislative Calendar July 29, 2010.	See Table 5 below.

S. 3614	Hutchison	July 19, 2010	Oil Spill Response Act	<p>Ordered reported from the Senate Committee on Commerce, Science, and Transportation.</p> <p>Directs the Commandant of the Coast Guard to establish a Maritime Center of Expertise for Maritime Oil Spill and Hazardous Substance Release Response. The center would train federal, state, and local responders and maintain two incident management teams. The center would support a research program (in coordination with the Interagency Coordinating Committee—OPA Title VII) for testing and development of response technologies and techniques.</p> <p>Directs Commandant of the Coast Guard to maintain a National Strike Force with a coordination center and public information assist team (each already created by the National Contingency Plan). The strike force will provide rapid incident management support, maintain capability to mobilize assets to incident within 24 hours, and train personnel. The coordination center will maintain an inventory of response equipment, and certify marine response organizations. The public information assist team will provide crisis communication during an incident and train personnel.</p> <p>Requires Commandant of the Coast Guard to maintain district preparedness teams to maintain equipment, administer area contingency plans and National Preparedness for Response Exercise Program, and provide</p>
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Bill Number	Sponsor	Introduced Date	Short Title	Major Actions	Key Oil Spill Policy Provisions
S. 1194 (H.R. 3619)	Cantwell	June 4, 2009	Coast Guard Authorization Act for Fiscal Years 2010 and 2011	Passed House October 23, 2009; Senate passed an amended version May 7, 2010; passed House September 30, 2010; presented to the President for signature October 4, 2010.	<p>other support and coordination during responses.</p> <p>Requires maritime oil spill response organizations listed in vessel/facility response plans to be certified by the Coast Guard and inspected annually. Requires response organizations to notify Strike Force coordinating center of a decrease in response assets.</p> <p>See details in Table 2.</p>

Source: Prepared by CRS.

Table 4. Summary of Selected Oil Spill Policy Provisions of H.R. 3534

The Consolidated Land, Energy, and Aquatic Resources Act of 2010 (Clear Act)—as passed the House July 30, 2010

Section Number and Title	Summary	Comments
Sec. 501. Gulf of Mexico restoration program	<p>Creates a Gulf of Mexico Restoration Task Force, staffed by the governors of each Gulf state and the heads of federal agencies (selected by the President). The President appoints the chair, who must be in the Executive Office of the President.</p> <p>Directs Task Force to create a Citizen Advisory Council of local representatives to provide recommendations to the Task Force.</p> <p>Task Force creates a comprehensive restoration plan for long-term ecological restoration of the Gulf.</p>	Unlike other restoration task force initiatives, this proposal includes Texas among the Gulf states.
Sec. 502. Gulf of Mexico long-term environmental monitoring and research program	Directs the Secretary of Commerce (through NOAA) to establish a long-term marine environmental monitoring and research program in the Gulf and to submit a biennial report to Congress summarizing the program's activities.	
Sec. 503. Gulf of Mexico emergency migratory species alternative habitat program	Directs the Secretary of Interior (through an agreement with the Fish and Wildlife Service) to establish an emergency migratory species alternative habitat program. The program will support projects that improve fish and bird habitats, among other things.	
Sec. 504. Gulf of Mexico Restoration Account	Creates a Gulf of Mexico Restoration Account in the Treasury. Adds a new section 311A to the CWA, creating an additional civil penalty for violations of section 311(b)(3): \$200 million per 1 million barrels discharged. The penalty revenues would fund the Restoration Account. This change would be retroactive to April 1, 2010.	
Sec. 701. Short Title	Title VII of the act may be cited as the "Oil Spill Accountability and Environmental Protection Act of 2010."	

Section Number and Title	Summary	Comments
Sec. 702. Repeal of and adjustments to limitation on liability	<p>Removes the liability limit for offshore facilities; modifies the liability limit provisions for mobile offshore drilling units (MODUs).</p> <p>Directs the President to revise the liability limits for vessels, onshore facilities, and deepwater ports at least once every three years after enactment; revisions should reflect the greater of (1) liability amount commensurate with risk (as determined by the President) or (2) an increase in Consumer Price Index.</p> <p>The amendments would apply to oil spills after enactment as well as claims arising from a spill that occurred prior to enactment, as long as the claim was presented within applicable time limits.</p>	<p>Although the MODU liability limit is effectively removed, MODUs would continue to be first treated as a tank vessel for discharges of oil “on or above the surface of the water.” The implications of this phrase are unclear. The phrase might suggest that MODU owner/operators would not be liable for discharges that are not “on or above the surface of the water.” Such discharges would most likely fall under the responsibility of the offshore facility.</p> <p>These amendments are effectively retroactive. The claim time limitations, which provide the degree of retroactivity, are found in 33 U.S.C. 2712. Claims for removal costs must be presented within six years after removal completion; damage claims must be presented within three years of injury. Thus, these provisions could apply to an incident that occurred several years ago, but CRS is not aware of a relevant incident (other than the April 2010 oil spill).</p>
Sec. 703. Evidence of financial responsibility for offshore facilities	<p>Increases the amount of financial responsibility that offshore facilities must demonstrate. Sets amount at \$300 million, but allows for President to establish alternate amounts based on several factors, including (among others) the insurance market, discharge risk, asset value of offshore facility company. Alternate amounts must be at least \$105 million for facilities seaward of state waters boundary and \$30 million for facilities landward of a state waters boundary.</p>	<p>Existing levels are \$35 million and \$10 million for facilities seaward and landward, respectively, of state waters boundaries. However, the President can set levels up to \$150 million, based on various factors. This provision is promulgated in 30 CFR Part 253, which links financial responsibility levels with potential worst-case discharge scenarios. The maximum discharge scenario requires a financial demonstration of \$150 million.</p>
Sec. 704. Damages to human health	<p>Adds damages to human health to the categories of damages for which a responsible party is liable. Human health specifically includes mental health.</p> <p>This addition would apply to oil spills after enactment as well as claims arising from a spill that occurred prior to enactment, as long as the claim was presented within applicable time limits.</p>	<p>Adding human health damages to OPA would be a substantial policy change. Whether to include human health within the liability structure of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA or Superfund, enacted in 1980) was an issue of considerable debate. CERCLA, which deals with hazardous substance releases (specifically excluding oil), does not hold parties liable for damages to human health.</p>

Section Number and Title	Summary	Comments
Sec. 705. Clarification of liability for discharges from mobile offshore drilling units	Amends liability provisions concerning mobile offshore drilling units.	
Sec. 706. Standard of review for damage assessment	Eliminates the “rebuttable presumption” provision that applies to trustees’ natural resource damage assessments in administrative or judicial proceedings.	The rebuttable presumption provision means that a responsible party would have the burden of proving that a trustee’s assessment is wrong, rather than the trustee having to show that the assessment is right. ^a
Sec. 707. Procedures for claims against Fund; Information on claims	<p>Adds provision stating during a spill of national significance (SONS) the President may exercise authorities in Sec. 707 to ensure that the presentation, filing, processing, settlement, and adjudication of claims occurs within the areas affected by the spill to greatest extent practicable.</p> <p>Adds new section (1013A) to OPA, authorizing President to require (during a SONS) a responsible party to provide information related to its claims process. Required information includes claim processing time and “any other data ... necessary to ensure the performance of the responsible party or the guarantor with regard to the processing and adjudication of such claims.”</p>	<p>It is unclear whether this provision would have any impact on the claims process, as it does not grant new authority.</p> <p>Under existing law, OPA does not authorize the federal government to monitor or audit the responsible party’s claims process.</p> <p>These amendments are effectively retroactive, employing the same text used in Sec. 702 (discussed above).</p>
Sec. 708. Additional amendments and clarifications to Oil Pollution Act of 1990	<p>Amends definition of “removal costs” to include related federal enforcement activities. Makes a corresponding addition to removal costs liability provision. Expands definition of “responsible party” for onshore facilities.</p> <p>Modifies cost recovery provisions: payments found to be arbitrary or capricious are not recoverable.</p>	Does not clarify who would determine if trust fund payments were arbitrary or capricious.
Sec. 709. Americanization of offshore operations in the Exclusive Economic Zone	Adds provision to shipping code (46 U.S.C. § 12111) requiring that vessels (including MODUs) engaged in EEZ resource activities be registered and owned by a U.S. citizen (i.e., U.S. flagged). Requires Coast Guard provide training to its personnel to implement this provision.	For more discussion of foreign flag issues, see “Coast Guard Oversight of OCS Safety” in CRS Report R41262, <i>Deepwater Horizon Oil Spill: Selected Issues for Congress</i> , coordinated by Curry L. Hagerty and Jonathan L. Ramseur.
Sec. 710. Safety management systems for mobile offshore drilling units	Requires MODU safety management plans pursuant to 46 U.S.C. § 3203 plans that address drilling operations.	

Section Number and Title	Summary	Comments
Sec. 711. Safety standards for mobile offshore drilling units	Directs the Secretary of Homeland Security to enhance vessel safety standard regulations by addressing worst-case discharges.	
Sec. 712. Operational control of mobile offshore drilling units	Requires a MODU operator to obtain a specific license.	
Sec. 713. Single-hull tankers	Shortens the double-hull transition period (from 2015 to 2011) for single-hull tankers offloading oil at deepwater ports or in lightering zones.	
Sec. 714. Repeal of response plan waiver	Removes ability for tank vessels and offshore/onshore facilities to operate without a response plan if a submitted plan is awaiting official approval.	
Sec. 715. National Contingency Plan	Amends the CWA to require changes to the NCP regarding dispersant use and regulation including: toxicity thresholds, independent testing, ranking of dispersants by region, ingredient disclosure; directs EPA to conduct dispersant risk study; authorizes fee collection to cover EPA's dispersant evaluation costs; adds NCP provision concerning containment booms, response planning for worst-case discharges.	For more discussion of dispersants, see "Use of Dispersants" in CRS Report R41262, <i>Deepwater Horizon Oil Spill: Selected Issues for Congress</i> , coordinated by Curry L. Hagerty and Jonathan L. Ramseur.
Sec. 716. Tracking Database	Directs President to establish a comprehensive oil/hazardous substance discharge database.	
Sec. 717. Evaluation and approval of response plans; maximum penalties	Modifies oversight authority of spill response plans, by allowing the President to designate which offshore facilities would require response plan review from the Secretary of Homeland Security (Coast Guard); requires that response plans contain additional information (e.g., risk analysis); grants additional authority concerning response plan oversight (e.g., biennial report to Congress) and enforcement; increases certain CWA penalty amounts; modifies the administrative penalty provisions.	Under existing law/regulations, the Department of the Interior's Bureau of Ocean Energy Management, Regulation, and Enforcement (BOEMRE, formerly the Minerals Management Service) has sole oversight of offshore facility response plans.
Sec. 718. Oil and hazardous substance cleanup technologies	Directs the Secretary of Homeland Security to establish a process for technology use during an oil spill (or hazardous substance release).	

Section Number and Title	Summary	Comments
Sec. 719. Implementation of oil spill prevention and response authorities	Amends CWA to more explicitly describe the oil spill prevention and response duties of EPA, the Coast Guard, DOT, and Interior.	
Sec. 720. Impacts to Indian Tribes and public service damages	Amends OPA liability by adding Indian Tribes to government revenue and public services damage categories.	
Sec. 721. Federal enforcement actions	Amends the CWA administrative penalty provisions by removing the limitation on Section 311(b) civil penalties for actions being addressed through the administrative penalty process.	According to the House Report (H.Rept. 111-567) for H.R. 5629, which contains an identical provision: “This section would allow independent Federal and State actions, including the assessment of penalties, in relation to the discharge of oil or hazardous substances under section 311 of the Clean Water Act. “
Sec. 722. Time required before electing to proceed with judicial claim or against the Fund	Amends OPA to shorten the timeframe from 90 to 45 days for claimants waiting on a responsible party to address a submitted claim.	
Sec. 723. Authorized level of Coast Guard personnel	Authorizes an increase in Coast Guard personnel for implementing the activities of this title.	
Sec. 724. Clarification of memorandums of understanding	Directs the President to implement or revise memorandums of understanding to clarify oil spill prevention roles and responsibilities of various federal agencies.	
Sec. 725. Build America requirement for offshore facilities	Amends OPA to require that offshore facilities used for oil exploration, development, or production in, on, above, or below the EEZ must be built in the United States. Allows the Secretary of Homeland Security to grant waiver under certain conditions.	
Sec. 726. Oil spill response vessel database	Requires the Coast Guard to inventory and maintain a database of all vessels capable of oil spill response.	
Sec. 727. Offshore sensing and monitoring systems	Amends OPA to specify sensing and monitoring system equipment requirements for offshore facilities.	
Sec. 730. Authorization of appropriations	Authorizes additional appropriations from the Oil Spill Liability Trust Fund:	

Section Number and Title	Summary	Comments
Sec. 731. Extension of liability to persons having ownership interests in responsible parties	<p>Homeland Security: \$30 million in FY2011; \$32 million annually in FY2012-FY2015;</p> <p>EPA: \$10 million annually FY2011-FY2015;</p> <p>DOT: \$7 million annually FY2011-FY2013; \$6 million annually FY2014-FY2015.</p> <p>Amends OPA definition of responsible party to include any person having an ownership interest (of more than 25%) of any of the responsible party categories (e.g., vessels, facilities, pipelines). Applies to incidents occurring on or after January 1, 2010.</p>	<p>The process by which impartial experts would vet a response plan is not explained. Moreover, “impartial experts” is not clarified.</p>
Sec. 732. Clarification of liability under Oil Pollution Act of 1990	<p>Amends OPA to state that “no release of liability” in connection with compensation received by a claimant will apply to OPA liability unless the claimant presented a claim and received compensation.</p>	
Sec. 733. Salvage activities	<p>Amends the CWA definition of “discharge (in 33 U.S.C. 1321) to also exclude discharges incidental to salvage activities authorized by the President in accordance with the NCP. Adds “salvage activities” to the list of activities exempt from liability (in 33 U.S.C. 1321(c)(4)).</p>	
Sec. 734. Requirement for redundancy in response plans	<p>Amends the CWA response plan provisions to require plans to specify redundancies if planned actions fail, require response plans be “vetted by impartial experts.”</p> <p>Amends the Outer Continental Shelf Lands Act to prohibit the Secretary of the Interior from issuing a license or permit for drilling unless the applicant has an approved facility response plan (under 33 U.S.C. 1321(j)(5)).</p>	

Source: Prepared by CRS.

a. See CRS Report R41396, *The 2010 Oil Spill: Natural Resource Damage Assessment Under the Oil Pollution Act*, by Kristina Alexander.

Table 5. Summary of Selected Oil Spill Policy Provisions of S. 3663

Clean Energy Jobs and Oil Company Accountability Act of 2010—Placed on Senate Calendar July 29, 2010

Section Number and Title	Summary	Comments
Sec. 101. Short Title	Big Oil Bailout Prevention Unlimited Liability Act of 2010	
Sec. 102. Removal of limits on liability for offshore facilities.	Eliminates liability limit for offshore facilities.	These amendments are effectively retroactive. The claim time limitations, which provide the degree of retroactivity, are found in 33 U.S.C. 2712. Claims for removal costs must be presented within six years after removal completion; damage claims must be presented within three years of injury. Thus, these provisions could apply to an incident that occurred several years ago, but CRS is not aware of an relevant incident (other than the April 2010 oil spill).
Sec. 103. Claims Procedure	Shortens the timeframe from 90 to 30 days for claimants waiting on action from the responsible party before submitting claim to the Trust Fund. For spills of national significance, the Trust Fund may pay for the government's administrative/personnel costs associated with claims process.	
Sec. 104. Oil and Hazardous Substance Response Planning	Adds individuals from industry, conservation groups, and the general public to those eligible for appointment to area committees. Amends the response plan requirements in the CWA by (among other things) adding provisions specific to oil well blowouts and worst-case discharge scenarios. Requires certain plans be published in <i>Federal Register</i> for public comment. Enhances conditions to be met to achieve plan approval. President may require plans to include best available technology.	
Sec. 105. Reports	Requires the administrator of the BP compensation fund to submit periodic reports to Congress (180 days after enactment, every 90 days after first report).	This would apply to the Gulf Coast Claims Facility, which began operating August 23, 2010.

Section Number and Title	Summary	Comments
Sec. 106. Trust Fund Advance Authority	During spills of national significance, authorizes additional advances from the Oil Spill Liability Trust Fund, up to \$100 million per advance, not to exceed the per-incident cap.	This additional advance provision was added by P.L. 111-191 (June 15, 2010), but that provision only applied to the <i>Deepwater Horizon</i> spill.
Sec. 201. Short Title	Federal Research and Technologies for Oil Spill Prevention and Response Act of 2010	
Sec. 202. Purposes	States objectives regarding technologies.	
Sec. 203. Interagency Committee	Amends OPA Title VII (Research and Development) by making the Interagency Committee chair a position that rotates (every two years) between the Coast Guard, EPA, NOAA, and the Department of the Interior.	Under current law the chairman is always a Coast Guard official.
Sec. 204. Science and Technology Advice and Guidance	Directs the chairman to work with the National Academy of Sciences to establish a Science and Technology Advisory Board. Board will assess state of technology and research needs and provide a report to Congress. Instructs Interagency Committee to update its implementation plan accordingly and to accept input from state and local governments and other stakeholders.	
Sec. 205. Oil Pollution Research and Development Program	Among other provisions, adds various provisions to research program, including evaluations of dispersants. Creates new R&D program that will be managed by the Secretary of the Interior to address oil discharges on Interior-managed land. Directs Department of Commerce to lead oil pollution effects research program. Instructs Interior to conduct extreme environmental condition demonstration projects. Establishes Research Centers of Excellence to conduct research through grant programs. Sets up pilot program for field tests. Authorizes \$25 million annually for the R&D program from the Trust Fund (without further appropriation) for FY2010 through FY2020. Authorizes an additional \$20 million annual appropriation from the Trust Fund for relevant	In recent years, Congress has appropriated approximately \$8 million per year to federal agencies to support oil spill R&D efforts.

Section Number and Title	Summary	Comments
Sec. 301. Short Title	<p>agencies. Amends OPA's Trust Fund funding limitation accordingly.</p> <p>Outer Continental Shelf Reform Act of 2010</p>	<p>Most of this title deals with MMS restructuring issues. Only the sections that relate most directly to oil spill policy are included in this table. For further discussion of MMS restructuring issues, see "Reorganization of BOEMRE/MMS" by Henry Hogue in CRS Report R41262, <i>Deepwater Horizon Oil Spill: Selected Issues for Congress</i>, coordinated by Curry L. Hagerty and Jonathan L. Ramseur.</p>
Sec. 306. Safety, environmental, and financial reform of the Outer Continental Shelf Lands Act.	<p>Among other provisions, allows the Secretary of Interior (after a public notice and hearing) to disqualify a person from bidding for OCS lease if the entity is a responsible party under OPA or has failed to meet compensation obligations for removal costs and damages. Requires lease holders to submit to the Secretary of Interior a deepwater operations plan before exploring areas in waters greater than 500 feet deep. Requires approval of a safety and environmental management plan before obtaining a drilling permit. Authorizes Secretary of Interior to disapprove an exploration plan under certain "exceptional circumstances."</p>	
Sec. 310. National Commission on Outer Continental Shelf Oil Spill Prevention.	<p>Establishes in the legislative branch a National Commission on Outer Continental Shelf Oil Spill Prevention to (among other things) examine causes of <i>Deepwater Horizon</i> spill, building on work of other investigative teams and commissions.</p>	
Sec. 401. Short Title	<p>Environmental Crimes Enforcement Act of 2010</p>	
Sec. 402 Environmental Crimes	<p>Among other provisions, instructs the U.S. Sentencing Commission to review the sentencing guidelines and policy statements related to CWA offenses to appropriately account for harm to public and the environment.</p>	
Sec. 501. Short Title	<p>Fairness in Admiralty and Maritime Law Act</p>	

Section Number and Title	Summary	Comments
Sec. 502. Repeal of Limitation of Shipowners' Liability Act of 1851	Amends the liability provisions in the Shipowners' Liability Act of 1851, adding claims related to oil spills to the list of claims that are not subject to limitation.	
Sec. 503. Assessment of Punitive Damages in Maritime Law	Amends maritime law (46 U.S.C. Chapter 301) regarding punitive damages for maritime torts.	
Sec. 504. Amendments to the Death on the High Seas Act	Expands liability under Death on the High Seas Act (46 U.S.C. Chapter 303).	
Sec. 505. Effective Date	Applies to actions after April 19, 2010, and actions that have not been fully adjudicated as of the enacted date.	
Sec. 601. Short Title	Securing Health for Ocean Resources and Environment Act (SHORE Act)	
Sec. 611. Improvements to National Oceanic and Atmospheric Administration oil spill response, containment, and prevention.	Directs Under Secretary for Oceans and Atmosphere (i.e., Administrator of NOAA) to do the following: conduct review of NOAA's capacity to respond to oil spills and submit a report to Congress; develop and maintain oil spill trajectory models, update the environmental sensitivity index products for each U.S. coastal area and offshore leasing area; prepare a review of subsea hydrocarbons, including their effects with dispersants on marine resources; establish a hydrocarbon monitoring and assessment program; set up an Interagency Coordinating Committee on Oil Pollution Research; establish an initiative examining threat and fate of oil spills from aging or abandoned infrastructure; prepare inventory of offshore abandoned/sunken vessels; submit report (after enactments and every five years) describing leasing regions' ecological baselines and risks posed by hydrocarbon development.	
Sec. 612. Use of Oil Spill Liability Trust Fund for preparedness, response, damage assessment, and restoration.	Amends OPA to provide from the Trust Fund not more than \$5 million (without further appropriation) in each fiscal year to the NOAA Administrator and the Assistant Secretary of the Interior for Fish and Wildlife and Parks. This funding is to cover activities related to	This additional funding does not specifically reference the additional duties created by Section 611. It is unclear to what extent the funding is intended to cover these activities.

Section Number and Title	Summary	Comments
Sec. 614. Strengthening coastal State oil spill planning and response.	<p>preparedness, response, restoration, and damage assessment capabilities. If a spill of national significance occurs, \$25 million shall be made available (from the Trust Fund) to federal trustees.</p> <p>Amends the Coastal Zone Management Act to allow Secretary of Commerce to issue grants (not to exceed \$750,000 per year for one state) to states for the following purposes: to revise management programs to identify and implement policies that address oil spill response and impacts (environmental, economic, and social) at the state level; to undertake regional coastal marine spatial planning; to revise applicable enforceable policies. Changes made should be coordinated with Area Contingency Plans. Grants do not require state matching funds.</p>	
Sec. 615. Gulf of Mexico long-term marine environmental monitoring and research program.	<p>Directs the Secretaries of Commerce and Interior and the EPA Administrator to establish a long-term (10-year period, at minimum) marine environmental monitoring and research program for the Gulf, ensuring access to independent, peer-reviewed data regarding impacts associated with <i>Deepwater Horizon</i> spill. Requires biennial reports to Congress. Data collected will be available to public after review and approval of Attorney General.</p>	
Sec. 616. Arctic research and action to conduct oil spill prevention.	<p>Directs NOAA (with collaboration from other agencies) to direct research and perform actions to improve oil spill prevention, response, and recovery in Arctic waters.</p>	
Sec. 621. Secretary defined.	<p>Secretary defined as the Secretary of Department in which Coast Guard is operating (i.e., Homeland Security).</p>	
Sec. 622. Arctic maritime readiness and oil spill prevention.	<p>Directs Coast Guard to assess and take action to reduce the risk and improve the capability of the United States to respond to a maritime disaster in the U.S. Beaufort and Chukchi Seas.</p>	

Section Number and Title	Summary	Comments
Sec. 623. Advance planning and prompt decision making in closing and reopening fishing grounds.	Amends the CWA to include in area contingency plans advance planning concerning opening/closing fishing grounds after an oil spill.	
Sec. 624. Oil spill technology evaluation.	Directs the Secretaries of Homeland Security and Interior and the EPA Administrator to establish a program for the formal evaluation and validation of oil pollution containment and removal technologies and methods. At each validation, the officials will determine if the process or technology should be designated as “best available.” If so determined, the new standard will be required in submitted and updated response plans.	
Sec. 625. Coast Guard inspections.	Instructs the Secretary of Homeland Security to increase the frequency and comprehensiveness of safety inspections for U.S. and foreign-flagged vessels.	
Sec. 626. Certificate of inspection requirements.	Adds offshore oil/gas exploration/production facilities to the list of vessels subject to Coast Guard inspection (33 U.S.C. § 3301). Instructs the Secretary of Homeland Security and the Secretary of Interior to jointly develop regulations to determine which components would be subject, but would include (at minimum) MODUs, fixed and floating drilling facilities, and risers and blowout preventers. The Secretaries may waive inspection requirements in some situations.	
Sec. 627. Navigational measures for protection of natural resources.	Directs the Coast Guard Commandant (in consultation with NOAA) to identify areas of U.S. waters in which routing or other navigational measures should be established to reduce oil spill risks. If identified, the Secretary of Homeland Security and NOAA Administrator shall seek to establish such areas through the International Maritime Organization. Instructs the Coast Guard Commandant to submit quarterly data to Congress on data collected in support of this section.	
Sec. 628. Notice to States of bulk oil transfers.	Allows a state to require 24-hour notification to the state and Coast Guard if a person transfers more than	

Section Number and Title	Summary	Comments
Sec. 629. Gulf of Mexico Regional Citizens' Advisory Council.	<p>250 barrels of oil to, from, or within a vessel in state waters.</p> <p>Instructs the President to establish a Gulf of Mexico Regional Citizens' Advisory Council to foster increased participation from Gulf stakeholders. Directs the President to submit to Congress a report describing operational details of the council, including how the council's advice and recommendation will be treated by relevant federal agencies.</p>	The tank barge limits would represent a substantial increase above current applicable limits.
Sec. 630. Vessel liability.	Amends OPA to modify the liability limits for vessels. Increases limits for tank vessels without double-hulls. ^a Creates new liability limits specific to tank barges.	
Sec. 632. Prompt publication of oil spill information.	Requires the Coast Guard Commandant to make publicly available (on a website) all prepared and approved Incident action plans associated with an oil spill response that is within the Coast Guard's jurisdiction. The plans shall be posted no later than 12 hours after an associated action has begun.	
Sec. 701. Catastrophic incident planning.	Directs President to ensure the federal government has a coordinated system of catastrophic incident plans. Instructs President to (among other things) review current plans and assess identified resources and related exercises; submit annual reports to Congress on status of catastrophic incident planning efforts. Amends Homeland Security Act of 2002 by creating an Office of Catastrophic Planning to lead the department's efforts concerning catastrophic incident planning and preparedness.	
Sec. 702. Alignment of response frameworks.	Directs the Secretary of Homeland Security and the EPA Administrator (and other agency heads determined by the President) to review the National Contingency Plan and the National Response Framework and submit a report to Congress concerning (among other things) the plans' coordination, consistency, and lessons learned from the <i>Deepwater Horizon</i> incident.	

Section Number and Title	Summary	Comments
Sec. 801. Subpoena power for National Commission on the BP <i>Deepwater Horizon</i> Oil Spill and Offshore Drilling.	Grants conditional subpoena power to the National Commission on the BP <i>Deepwater Horizon</i> Oil Spill and Offshore Drilling.	
Sec. 4201. Gulf Coast Ecosystem restoration.	<p>Creates a Gulf Coast Ecosystem Restoration Task Force, staffed by high-ranking federal agency officials, and appointees from Gulf states and local governments and affected Indian tribes. The President appoints the chair.</p> <p>Task force creates a comprehensive restoration plan for long-term ecological restoration of the Gulf. Plan will include a list of priority projects: (1) based on best available science; (2) without regard to geographic location; and (3) with the highest priority to projects and programs that will achieve the greatest contribution in ecosystem restoration and function.</p> <p>Authorizes \$2.5 billion for FY2012-FY2021. The federal share of project/activity costs shall not exceed 65% of costs.</p>	This provision may receive comparisons to the Administration's Restoration Plan (released September 2010) ^b and S. 3763 (Landrieu). Unlike this provision, which would support the Task Force through appropriations, both of those proposals would fund the restoration activities by directing CWA penalties associated with the Gulf spill into a restoration fund.
Sec. 5001. Modifications with respect to Oil Spill Liability Trust Fund.	Increases the Oil Spill Liability Trust Fund financing rate to 45 cents per barrel. Extends the financing rate sunset date from the end of 2017 until the end of 2020. Raises the Trust Fund's per-incident limitation from \$1 billion to \$5 billion (natural resource damages from \$500,000 to \$2.5 billion).	The current rate is 8 cents per barrel.

Source: Prepared by CRS.

- a. The gross tonnage rate for double-hull tank vessels remains at \$1,900 per gross ton. This would be a decrease, because the Coast Guard increased this value to \$2,000 in a 2009 rulemaking that adjusted liability limits to reflect inflation (*Federal Register*, Vol. 74, p. 31357; July 1, 2009).
- b. "America's Gulf Coast: A Long-Term Recovery Plan after the Deepwater Horizon Spill," at <http://www.restorethegulf.gov/release/2010/09/28/america%E2%80%99s-gulf-coast-long-term-recovery-plan-after-deepwater-horizon-oil-spill>.

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